

Senate Bill No. 1352

Passed the Senate August 23, 2004

Secretary of the Senate

Passed the Assembly August 12, 2004

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 6126.3 and 6126.5 of, and to add Sections 6131 and 6132 to, and to repeal Section 6126.6 of, the Penal Code, relating to the Inspector General.

LEGISLATIVE COUNSEL'S DIGEST

SB 1352, Romero. Inspector General: Youth and Adult Correctional Agency.

Existing law specifies the duties and responsibilities of the Inspector General in connection with departments under the authority of the Youth and Adult Correctional Agency.

This bill would revise and recast provisions relating to classifying what materials in connection with investigations and audits by the Inspector General are public records.

Existing law authorizes access by the Inspector General to specified records for the purpose of conducting an audit or investigation. Failure or refusal to permit access, examination, or reproduction of those records is a misdemeanor.

This bill would expand access by the Inspector General to certain records, as specified. The bill would also authorize the Inspector General to redact certain identifying personal information, as specified.

By expanding the access of the Inspector General to certain records, where the denial of access is a crime, this bill would expand the scope of an existing crime, and thereby impose a state-mandated local program.

Existing law provides that it is a misdemeanor for the Inspector General or any employee of the Inspector General to release any information received pursuant to these provisions, except as provided by these provisions, or to release information that is otherwise prohibited by law from being disclosed.

This bill would repeal those provisions.

The bill would require disclosure of completed audit or investigation reports by the Inspector General, and specify the conditions of those disclosures.

The bill would require annual and other regular reports by the Inspector General, to the Governor and the Legislature, and others, as specified.



The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 6126.3 of the Penal Code is amended to read:

6126.3. (a) The Inspector General shall not destroy any papers or memoranda used to support a completed audit within three years after a report is released.

(b) Except as provided in subdivision (c), all books, papers, records, and correspondence of the office pertaining to its work are public records subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and shall be filed at any of the regularly maintained offices of the Inspector General.

(c) The following books, papers, records, and correspondence of the office of the Inspector General pertaining to its work are not public records subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, nor shall they be subject to discovery pursuant to any provision of Title 3 (commencing with Section 1985) of Part 4 of the Code of Civil Procedure in any manner:

(1) All reports, papers, correspondence, memoranda, electronic communications, or other documents that are otherwise exempt from disclosure pursuant to the provisions of subdivision (d) of Section 6126.5, subdivision (c) of Section 6128, subdivision (a) or (b) of Section 6131, or all other applicable laws regarding confidentiality, including, but not limited to, the California Public Records Act, the Public Safety Officers' Procedural Bill of Rights, the Information Practices Act of 1977, the Confidentiality of Medical Information Act of 1977, and the provisions of Section 832.7, relating to the disposition notification for complaints against peace officers.



(2) Any papers, correspondence, memoranda, electronic communications, or other documents pertaining to any audit or investigation that has not been completed.

(3) Any papers, correspondence, memoranda, electronic communications, or other documents pertaining to internal discussions between the Inspector General and his or her staff, or between staff members of the Inspector General, or any personal notes of the Inspector General or his or her staff.

(4) All identifying information, and any personal papers or correspondence from any person requesting assistance from the Inspector General, except in those cases where the Inspector General determines that disclosure of the information is necessary in the interests of justice.

SEC. 2. Section 6126.5 of the Penal Code is amended to read:

6126.5. (a) Notwithstanding any other provision of law, the Inspector General during regular business hours or at any other time determined necessary by the Inspector General, shall have access to and authority to examine and reproduce, any and all books, accounts, reports, vouchers, correspondence files, documents, and other records, and to examine the bank accounts, money, or other property, of any entity defined in Section 6126 for any audit or investigation. Any officer or employee of any agency or entity having these records or property in his or her possession or under his or her control shall permit access to, and examination and reproduction thereof consistent with the provisions of this section, upon the request of the Inspector General or his or her authorized representative.

(b) For the purpose of conducting any audit or investigation, the Inspector General or his or her authorized representative shall have access to the records and property of any public or private entity or person subject to review or regulation by the public agency or public entity being audited or investigated to the same extent that employees or officers of that agency or public entity have access. No provision of law or any memorandum of understanding or any other agreement entered into between the employing entity and the employee or the employee's representative providing for the confidentiality or privilege of any records or property shall prevent disclosure pursuant to subdivision (a).



(c) Any officer or person who fails or refuses to permit access, examination, or reproduction, as required by this section, is guilty of a misdemeanor.

(d) The Inspector General may require any employee of those entities specified in Section 6126 to be interviewed on a confidential basis. Any employee requested to be interviewed shall comply and shall have time afforded by the appointing authority for the purpose of an interview with the Inspector General or his or her designee. The Inspector General shall have the discretion to redact the name or other identifying information of any person interviewed from any public report issued by the Inspector General, where required by law or where the failure to redact the information may hinder prosecution or an action in a criminal, civil, or administrative proceeding, or where the Inspector General determines that disclosure of the information is not in the interests of justice. It is not the purpose of these communications to address disciplinary action or grievance procedures that may routinely occur. If it appears that the facts of the case could lead to punitive action, the Inspector General shall be subject to Sections 3303, 3307, 3307.5, 3308, and 3309 of the Government Code as if the Inspector General were the employer, except that the Inspector General shall not be subject to the provisions of any memorandum of understanding or other agreement entered into between the employing entity and the employee or the employee's representative that is in conflict with, or adds to the requirements of, Sections 3303, 3307, 3307.5, 3308, and 3309 of the Government Code.

SEC. 3. Section 6126.6 of the Penal Code is repealed.

SEC. 4. Section 6131 is added to the Penal Code, to read:

6131. (a) Upon the completion of any audit conducted by the Inspector General, he or she shall prepare a written report, which shall be disclosed, along with all underlying materials the Inspector General deems appropriate, to the Governor, the Secretary of the Youth and Adult Correctional Agency, the appropriate director, chair, or law enforcement agency, and the Legislature. Copies of all those written reports shall be posted on the Inspector General's Web site within 10 days of being disclosed to the above-listed entities or persons.

(b) Upon the completion of any investigation conducted by the Inspector General, he or she shall prepare a complete written



report, which shall be held as confidential and disclosed in confidence, along with all underlying investigative materials the Inspector General deems appropriate, to the Governor, the Secretary of the Youth and Adult Correctional Agency, and the appropriate director, chair, or law enforcement agency.

(c) Upon the completion of any investigation conducted by the Inspector General, he or she shall also prepare and issue on a quarterly basis, a public investigative report that includes all investigations completed in the previous quarter. The public investigative report shall differ from the complete investigative report in the respect that the Inspector General shall have the discretion to redact or otherwise protect the names of individuals, specific locations, or other facts that, if not redacted, might hinder prosecution related to the investigation, or where disclosure of the information is otherwise prohibited by law, and to decline to produce any of the underlying investigative materials. In a case where allegations were deemed to be unfounded, all applicable identifying information shall be redacted. The public investigative report shall be made available to the public upon request and on a quarterly basis as follows:

(1) In those cases where an investigation is referred only for disciplinary action before the State Personnel Board or for other administrative proceedings, the employing entity shall, within 10 days of receipt of the State Personnel Board's order rendered in other administrative proceedings, provide the Inspector General with a copy of the order. The Inspector General shall attach the order to the public investigative report on its Web site and provide copies of the report and order to the Legislature, as well as to any complaining employee and any employee who was the subject of the investigation.

(2) In those cases where the employing entity and the employee against whom disciplinary action has been taken enter into a settlement agreement concerning the disciplinary action, the employing entity shall, within 10 days of the settlement agreement becoming final, notify the Inspector General in writing of that fact and shall describe what disciplinary action, if any, was ultimately imposed on the employee. The Inspector General shall include the settlement information in the public investigative report on its Web site and provide copies of the report to the Legislature, as well as



to any complaining employee and any employee who was the subject of the investigation.

(3) In those cases where the employing entity declines to pursue disciplinary action against an employee, the employing entity shall, within 10 days of its decision, notify the Inspector General in writing of its decision not to pursue disciplinary action, setting forth the reasons for its decision. The Inspector General shall include the decision and rationale in the public investigative report on its Web site and provide copies of the report to the Legislature, as well as to any complaining employee and any employee who was the subject of the investigation.

(4) In those cases where an investigation has been referred for possible criminal prosecution, and the applicable local law enforcement agency or the Attorney General has decided to commence criminal proceedings against an employee, the report shall be made public at a time deemed appropriate by the Inspector General after consultation with the local law enforcement agency or the Attorney General, but in all cases no later than when discovery has been provided to the defendant in the criminal proceedings. The Inspector General shall thereafter post the public investigative report on its Web site and provide copies of the report to the Legislature, as well as to any complaining employee and any employee who was the subject of the investigation.

(5) In those cases where the local law enforcement agency or the Attorney General declines to commence criminal proceedings against an employee, the local law enforcement agency or the Attorney General shall, within 30 days of reaching that decision, notify the Inspector General of that fact. The Inspector General shall include the decision in the public investigative report on its Web site and provide copies of the report to the Legislature, as well as to any complaining employee and any employee who was the subject of the investigation.

(6) In those cases where an investigation has been referred for neither disciplinary action or other administrative proceedings, nor for criminal prosecution, the Inspector General shall include the decision not to refer the matter in the public investigative report on its Web site and provide copies of the report to the Legislature, as well as to any complaining employee and any employee who was the subject of the investigation.

SEC. 5. Section 6132 is added to the Penal Code, to read:



6132. (a) The Inspector General shall report annually to the Governor and the Legislature a summary of his or her investigations and audits. The summary shall be posted on the Inspector General's Web site and otherwise made available to the public upon its release to the Governor and the Legislature. The summary shall include, but not be limited to, significant problems discovered by the Inspector General, and whether recommendations the Inspector General has made through audits and investigations have been implemented by the subject agency, department, or board.

(b) The Inspector General shall issue regular, and in no case less than twice per year, reports to the Governor and the Legislature summarizing its findings concerning its oversight of Youth and Adult Correctional Agency disciplinary cases and shall thereafter post the reports summarizing disciplinary cases on its Web site.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Approved _____, 2004

Governor

